

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

**IN RE: AME CHURCH EMPLOYEE
RETIREMENT FUND LITIGATION**

MDL Docket No. 1:22-md-03035-
STA-jay
ALL CASES

Honorable S. Thomas Anderson

**JOINT STATUS UPDATE IN ADVANCE OF
DECEMBER 13, 2023 STATUS CONFERENCE**

At the initial status conference in this matter, the Court requested that the Parties provide a joint update on the status of litigation seven days before each status conference. [ECF No. 69]. In advance of the December 13, 2023 status conference, the Parties report as follows:

I. Procedural Overview Since the October 5, 2023 Status Conference

a. Symetra's Motion to Stay

On July 28, 2023, Symetra filed an opposition to the AMEC Defendants' motion to dismiss Symetra's Cross-Complaint. [ECF No. 258]. Included within that response was a motion for stay of proceedings with respect to claims involving Symetra. [ECF No. 259, pp. 7, 10-15]. Plaintiffs filed a response in opposition to Symetra's request for a stay on August 18, 2023 [ECF No. 271], and the AMEC Defendants also filed a response in opposition on the same day. [ECF No. 272].

On August 11, 2023, Symetra filed a response to AMEC's first amended cross-

complaint by again moving to stay AMEC's cross-claims against Symetra. [ECF No. 269]. AMEC opposed this second request for a stay on August 25, 2023. [ECF No. 274]. Symetra then filed a consolidated reply brief addressing Plaintiffs' and AMEC's respective oppositions to its motions for stays on September 18, 2023. [ECF No. 281]. The Court heard argument on these motions to stay at the October 5, 2023 status conference.

Subsequently, on November 21, 2023, Symetra moved for leave to file a supplemental brief and exhibits on its motions to stay. [ECF No. 304]. The Court granted leave and Symetra filed its supplemental brief on November 22, 2023. [ECF No. 306]. Additionally, the Court set a deadline of December 6 by which AMEC and Plaintiffs should move for leave to file supplemental briefing in response to Symetra's filings. [ECF No. 305]. AMEC moved for leave on November 29, [ECF No. 307], and Plaintiffs moved for leave on December 5, [ECF No. 310], both of which the Court granted, [ECF No. 308, ECF No. 311]. Both AMEC and Plaintiffs will file their supplemental briefs on or before December 8, 2023. The supplemental briefing will be complete before the upcoming December 13 status conference.

b. Pending Motions to Dismiss

There are currently four pending motions to dismiss.

First, AMEC filed a motion to dismiss Symetra Life Insurance Company's Cross-Complaint on June 2, 2023. [ECF No. 230]. Symetra responded on July 28, 2023, [ECF No. 258], and AMEC filed its reply on August 25, 2023 [ECF No. 275]. Briefing is now complete on that motion to dismiss, and the Court heard oral

argument on the motion at the October 5, 2023, status conference.

Second, AMEC also filed a motion to dismiss Newport's contingent cross-claim on June 2, 2023. [ECF No. 231]. Newport responded on July 21, 2023, [ECF No. 255], and AMEC filed its reply brief on August 18, 2023, [ECF No. 273]. Briefing is now complete on that motion to dismiss, and the Court heard oral argument at the October 5, 2023 Status Conference.

Third, on September 7, 2023, Newport filed a motion to dismiss all claims against it in AMEC's amended cross-complaint. [ECF No. 280]. AMEC responded on October 16, 2023, [ECF No. 289], and Newport filed its reply brief on November 13, 2023, [ECF No. 302]. Briefing is now complete on that motion to dismiss. The Court has not heard oral argument on the motion.

Fourth, on September 25, 2023, Symetra Financial Corporation filed a motion to dismiss AMEC's third-party complaint for lack of personal and subject-matter jurisdiction or to stay the claims in that complaint pending resolution of the arbitration between AMEC and the two Symetra entities. [ECF No. 282]. AMEC filed its response on November 6, 2023. [ECF No. 301]. Symetra Financial timely filed a reply brief on December 1, 2023. [ECF No. 309]. Briefing is now complete on that motion to dismiss. The Court has not heard oral argument on the motion.

c. Plaintiffs' Motion to Sever Claims Against Jarrod Erwin

On October 4, 2023, Plaintiffs filed a motion to sever and stay claims against Defendant Jarrod Erwin. [ECF No. 284]. On October 18, 2023, Symetra and Newport collectively moved for an extension to file a response to the Motion to Sever. [ECF No.

290]. Plaintiffs opposed the extension. [ECF No. 294]. The Court granted Symetra and Newport's request for an extension, [ECF No. 296], and they filed a response in opposition on November 1, 2023, [ECF No. 297]. Plaintiffs sought leave to file a reply to Symetra and Newport's opposition, [ECF No. 298], which the Court granted, [ECF No. 299]. Plaintiffs filed their reply brief on November 6, 2023. The Court has not heard oral argument on the motion.

II. Service of Plaintiffs' Consolidated Amended Complaint and AME Church's Crossclaims and Third-Party Claims

As discussed during the last status conference, two of the Motorskill entities remain to be served but have not been due to the Erwin Bankruptcy. Further, Randall Erwin, who passed away in February, has also not been served because his estate has still not been established.¹

Two of the Motorskill entities (who were both served in September 2022) have not answered or otherwise responded to Plaintiffs' Amended Complaint. Those entities are Motorskill Ventures I, L.P. and Motorskill Asia Ventures I, L.P. Defendant Rodney Brown has also not answered or otherwise responded to Plaintiffs' Amended Complaint (served April 5, 2023).

On July 25, 2023, the AMEC Defendants filed a First Amended Partial Answer to Consolidated Amended Complaint, Cross-Complaint, and Third-Party Complaint.

¹ Plaintiffs note that at the February 23 status conference Jarrod Erwin's counsel stated in open court that he'd provide Plaintiffs with a death certificate, but to date Erwin's counsel has not sent it. Plaintiffs have also learned that, although the elder Erwin had a will, none of his children/heirs have submitted it to the probate court or otherwise opened an estate for their father since his death, further hindering the Parties efforts to effect service.

[ECF No. 256]. In this amended pleading, AMEC cross-claims against Jerome Harris, Newport Group, Inc., Robert Eaton, Randall Erwin, Financial Freedom Group, Inc., Motorskill Asia Venture Group, Motorskill Asia Ventures 1, LP, Motorskill Venture Group, Motorskill Ventures 1, LP, Rodney Brown & Company, and Symetra Life Insurance Company.² At the time of filing, AMEC was informed that, with the exception of Randall Erwin, all of these cross-defendants (who were named as defendants in Plaintiffs' Consolidated Amended Complaint) had already been served by Plaintiffs and were, accordingly, parties properly before this Court.

Nonetheless, AMEC has arranged for process servers to hand-deliver the First Amended Partial Answer, Cross-Complaint, and Third-Party Complaint on the Motorskill Asia Venture Group, Motorskill Asia Ventures 1, LP, Motorskill Venture Group, Motorskill Ventures 1, LP, and Rodney Brown & Company, as no attorney has appeared on record for these entities. Additionally, AMEC has received an executed Waiver of Service from third-party defendant Symetra Financial Corporation, which was filed in this case on July 27, 2023. [ECF No. 257]. Like the Plaintiffs, the only parties who remain to be served with AMEC's First Amended Partial Answer are Randall Erwin and two Motorskill entities, Motorskill Venture Group and Motorskill Asia Venture Group.

III. Erwin Bankruptcy Proceedings

With the exception of additional written discovery and document productions

² As explained in the amended pleading, because of the bankruptcy filing of Jarrod Erwin, AMEC took the cross-claims against Jarrod Erwin out of its First Amended Partial Answer. See Section III, Erwin Bankruptcy Proceedings for the status update on AMEC's claims in the bankruptcy proceeding.

among the Parties and subpoenas for documents to third-parties, prosecution of this action has largely been stalled by the Erwin Bankruptcy. Plaintiffs, however, have managed to conduct some discovery in the Erwin Bankruptcy.

a. Discovery Efforts

On April 17, 2023, Plaintiffs filed a motion for relief from the stay to continue pursuing their claims in this MDL or, in the alternative, for discovery from Jarrod Erwin in the bankruptcy proceeding. A hearing on that motion was held on May 1, 2023. The Court ultimately held the motion for relief in abeyance and ordered a Rule 2004 examination of Jarrod Erwin as well as for Mr. Erwin to produce certain boxes of documents to Plaintiffs for their review in advance of the examination. Mr. Erwin ultimately produced 56 banker's boxes. After reviewing those files, Plaintiffs took the Rule 2004 examination of Mr. Erwin on June 27, 2023.

On July 7, 2023, Plaintiffs filed a motion for sanctions arising primarily from Mr. Erwin's testimony in his Rule 2004 examination that he had removed certain documents from the 56 boxes before producing them to Plaintiffs. The Court held a hearing on that sanctions motion on August 16, 2023, and granted Plaintiffs' motion in part, ordering Mr. Erwin to produce all of the documents that he had withheld. Mr. Erwin mailed four bankers boxes of documents to Plaintiffs following that order.³

On August 29, 2023, Plaintiffs noticed Rule 2004 examinations of Ryan Erwin and Kimberly Levicky, Mr. Erwin's brother and sister, and issued subpoenas for the same. After consulting with Ryan Erwin and Kimberly Levicky's attorney, Plaintiffs

³ These four boxes of documents and the previous 56 boxes of documents have not been produced to Defendants.

agreed to proceed with the 2004 examination of Ryan Erwin only. That examination took place on September 12, 2023.

b. Procedural Status

Prior to that Rule 2004 examination, the Bankruptcy Trustee filed a motion to dismiss the case on several grounds. The hearing on that motion was initially scheduled for July 13, 2023. Plaintiffs noticed their intent to join in the motion to dismiss on June 30, 2023. On July 11, 2023, the Court moved the motion to dismiss hearing from July 13, 2023 to August 24, 2023. That hearing was again rescheduled by the Court for October 26, 2023, and later by the Trustee to November 27, 2023.

On July 17, 2023, AMEC and AMEC Ministerial Retirement Annuity Plan filed Proofs of Claim in the bankruptcy proceeding. On July 25, 2023, AMEC filed a Motion for Relief from the Automatic Stay to obtain permission to proceed with the cross-claims against Mr. Erwin before this Court. AMEC later withdrew its motion for relief from the automatic stay without prejudice to seek relief at a later date by agreement with Mr. Erwin.

Lastly, Plaintiffs and AMEC both initiated adversary proceedings to determine the dischargeability of debt in early August of 2023, and Mr. Erwin moved to dismiss those proceedings. AMEC filed its response brief on October 26, 2023, and the Bankruptcy Court denied Mr. Erwin's motion to dismiss and set a trial date for August of 2024. Plaintiffs and Mr. Erwin agreed to continue the hearing date on Mr. Erwin's motion to dismiss in Plaintiffs' adversary proceeding to December 6, 2023. Plaintiffs filed their response to Mr. Erwin's motion to dismiss one week prior to

hearing pursuant to an order of the Bankruptcy Court on November 29, 2023.

IV. Status of Discovery

Discovery commenced on September 9, 2022. [ECF No. 78, p. 2]. Plaintiffs served discovery requests on most Parties that day, and served all Parties that made an appearance after that by the end of September. Symetra served discovery requests on the AMEC Defendants in May 2023, which the AMEC Defendants responded to in June 2023. Symetra also served discovery requests on Plaintiffs, Defendant Eaton, and Defendant Harris on June 30, 2023. Defendant Harris responded to Symetra's requests on July 28, 2023. Defendant Eaton served his responses on August 11, 2023, and Plaintiffs served their responses on August 31, 2023.

Newport served requests for production on Plaintiffs in May of 2023. Plaintiffs served their written responses and objections to those requests on June 21, 2023. Newport also served the AMEC Defendants with requests for production in May of 2023. The AMEC Defendants served their written responses and objections to those requests on July 20, 2023.

The Parties have been producing documents, with the following having been produced to date:⁴

Defendant	Date of Production	Number of Documents Produced
AME Church	4/29/2023	617
Robert Eaton	12/13/2022	711
Dr. Jerome Harris	12/28/2022	21
	2/28/2023	4

⁴ A small number of additional documents were produced under Rule 408 of the Federal Rules of Evidence and may not have been produced to all Parties in this litigation. Those documents are not identified in this chart.

	07/24/2023	5
Symetra Life Insurance	1/5/2023	889
	2/8/2023	5
	3/17/2023	51
	4/12/2023	1,465
	6/29/2023	4,439
	11/17/2023	90
Newport Group	1/31/2023	667
	2/1/2023	5
	3/7/2023	5
	3/31/2023	1,157
	6/2/2023	6,009
	7/5/2023	5,472
Plaintiffs ⁵	9/1/2022	884
	6/21/2023	217

Plaintiffs understand that additional documents possessed by Dr. Harris were seized as part of a related criminal investigation. Plaintiffs are in the process of attempting to recover copies of those documents. AMEC Defendants served written discovery requests to Jerome Harris on June 16, 2023; Harris served responses on July 24, 2023.

Plaintiffs have also engaged in discovery of third parties and have sent subpoenas to the following individuals/entities:

Subpoenaed Party	Date of Service	General Documents Sought	Number of Documents Produced
Dr. Richard Allen Lewis	12/7/2022	documents related to AME's finances	0
Gregory Terrell & Company	12/8/2022	documents related to audit of AME's retirement fund after Dr. Harris's retirement	0
Day & Night	12/8/2022	documents related to	24

⁵ This reflects the cumulative number of pages, rather than unique documents, produced by all Plaintiffs.

Solar		investments and transactions with AME's retirement fund	
Hoskins & Company	12/8/2022	documents related to audit of AME's retirement fund after Dr. Harris's retirement	0
Deutsche Bank Securities	3/27/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	81
J.P. Morgan Securities, LLC	5/30/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	1,214 ⁶
Regions Bank	3/7/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	765
Truist Bank	3/10/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	827
UBS Financial	3/9/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton and/or Motorskill entities	0
CBiz, Inc.	May 2, 2023	accounting and corporate records related to entities controlled by Dr. Harris and/or Robert Eaton	431

Plaintiffs are in the process of conferring with several of these entities regarding the scope of the subpoenas and expect to receive additional documents from some of them. Plaintiffs are also continuing to identify additional third parties that

⁶ This refers to the number of pages in the production, rather than the unique number of files.

may have documents relevant to this litigation and preparing subpoenas for those documents.

V. Mediation Efforts

As discussed at earlier status conferences, Plaintiffs, AME Church, the Eaton Defendants, Newport, Symetra, and Dr. Harris agreed to engage in an early mediation with the Hon. Justice Janice M. Holder (Ret.). That mediation occurred on February 6, 2023. A second mediation between Plaintiffs and the AMEC Defendants occurred on May 4, 2023. The Parties have not continued settlement discussions since that mediation session and do not have any additional sessions scheduled at this time.

VI. Proposed Schedule for Future Status Conferences

The Court has already scheduled the next two status conferences for February 27, 2024 and May 3, 2024, respectively. The Parties propose that the Court continue scheduling future status conferences approximately every sixty days, with a remote attendance option (either by telephone or video-conferencing) for parties that are unable or may not need to attend each status conference in person so as to limit the costs and burdens associated with attending each conference. The Parties propose the next status conference be scheduled now, to occur during the week of June 24, 2024.

VII. Conclusion

The Parties appreciate the Court's diligent management of this matter and welcome the opportunity to address any additional matters the Court would like to discuss at the December 13, 2023 status conference.

Respectfully submitted this the 6th day of December 2023.

/s/ Matthew E. Lee

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